

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**ANDREAS PEFANIS on behalf of
themselves and others similarly situated,**

Plaintiff,

INDEX NO: 08 CIV. 002(DC)

v.

WESTWAY DINER, INC.

Defendants.
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DECLARATION OF MAIMON KIRSCHENBAUM

I, Maimon Kirschenbaum, under penalty of perjury, affirm as follows:

1. My name is Maimon Kirschenbaum, and I am a member of Joseph & Herzfeld LLP, Plaintiffs' counsel in the above-captioned matter.
2. I submit this declaration in support of Plaintiffs' motion for conditional and class certification.
3. Joseph & Herzfeld LLP is a law firm dealing almost exclusively with employee rights. Specifically, the firm represents employees in wage/hour and employment discrimination matters.
4. The firm was founded by Charles Joseph.
5. Mr. Joseph graduated New York University School of Law and has over fifteen years of experience practicing law.

6. After seven years at Debevoise & Plimpton LLP, in 1999 he founded Joseph & Herzfeld LLP in order to dedicate his practice to the protection of workers' rights.

7. Mr. Joseph spends approximately fifty percent of his time litigating wage and hour issues, and serves as lead counsel for several large FLSA class/collective actions.

8. I manage the firm's food service wage and hour department.

9. Since graduating Fordham University School of Law in 2005, I have worked at Joseph & Herzfeld LLP. As a result of my accomplishments representing foodservice workers throughout New York City, detailed below, I became a member/partner of the firm in May of 2007.

10. Over 90% of my personal current docket involves class action lawsuits against New York City restaurants for wage and hour violations.

11. During the last approximately two and a half years, our wage and hour practice has filed and served as lead/class counsel for 37 class/collective actions on behalf of people employed in the New York food service industry, in addition to a significant number of individual actions. *See e.g., Agofonova v. Nobu Corp.*, No. 07-Civ-6926 (S.D.N.Y. Feb. 6, 2009) (granting final approval of settlement and certification of settlement class in wage and hour class action); *Williams v. Twenty Ones, Inc.*, No. 07-Civ-3978, 2008 WL 2690734 (S.D.N.Y. June 30, 2008) (conditionally certifying FLSA collective action of restaurant/club workers); *Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317 (S.D.N.Y. Oct. 5, 2007) (conditionally certifying FLSA collective action of restaurant workers).

12. In litigating these cases, I have spent the majority of the last two years researching and discussing with experts all cases, legislative history, administrative decisions, related to New York's laws related to compensation of tipped employees.

13. Several of these of the cases have already settled for a total recovery of nearly \$10,000,000. (Some are pending preliminary or final approval by the Court.)

14. As a result of these lawsuits, we have recovered significant sums of money for thousands of New York City restaurant employees. In addition, we have increased awareness of wage and hour laws throughout the New York City restaurant industry.

15. Our work has attracted significant media attention and contributed greatly to a city-wide movement on behalf of food service employees.

16. Joseph & Herzfeld LLP is willing and able to commit the necessary resources to represent the class.

17. Attached hereto as Exhibit A is a true and correct copy of the pages of the deposition of Petros Dafnos cited in Plaintiff's memorandum of law.

I affirm, under penalty of perjury, that the above and foregoing information is true and correct.

Dated: New York, New York
March 12, 2009

/s/ D. Maimon Kirschenbaum
D. Maimon Kirschenbaum